

NNSA EEO Counselor Checklist

At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities. At a minimum those rights include the following:

Anonymity

- ❑ You have the right to remain anonymous during the EEO counseling stage. However, you must be aware that a request to remain anonymous may limit the counselor's ability to resolve the complaint informally.

Right to Representation

- ❑ The right to representation throughout the complaint process including the counseling stage. The EEO Counselor should make clear to the aggrieved person that the EEO counselor is not an advocate for either the aggrieved person or the agency, but acts strictly as a neutral in the EEO process.
- ❑ Attorney fees can only be paid for services performed after the filing of a written complaint and after the complainant has notified the agency that he or she is represented by an attorney, except that fees are allowable for an attorney's time in reviewing the case and determining whether or not to represent the complainant.

Process Selection

- ❑ The right to choose between the agency's Alternative Dispute Resolution (ADR) process or EEO counseling, where the agency agrees to offer ADR in the particular case, and information about each procedure.
- ❑ Provide complainant a copy of the NNSA Mediation Brochure, which includes the formal Mediation Election Form.
- ❑ Where the aggrieved person agrees to participate in an established ADR program, the written notice terminating the counseling period will be issued upon completion of the dispute resolution process or within ninety (90) calendar days of the first contact with the EEO Counselor, whichever is earlier.

- ❑ The possible election requirement between a negotiated grievance procedure and the EEO complaint procedure. See Chapter 4, Section III of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter4.html) <http://www.eeoc.gov/federal/md110/chapter4.html>
- ❑ The election requirement in the event that the claim at issue is appealable to the Merit Systems Protection Board (MSPB), i.e., the dispute is a mixed case (discrimination based on Title VII basis and eligible to use MSPB, or non-discrimination claims within MSPB jurisdiction). Those eligible to use the MSPB include (1) competitive service employees not serving a probationary or trial period under an initial appointment; (2) career appointees to the Senior Executive Service; (3) non-competitive service veterans preference eligible employees with one or more years of current continuous service; and (4) non-preference eligible excepted service employees who have completed their probationary period or with two or more years of current continuous service. MSPB jurisdiction includes (1) reduction in grade or removal for unacceptable performance; (2) removal, reduction in grade or pay, suspension for more than fourteen (14) days, or furlough for thirty (30) days or less for cause that will promote the efficiency of the service; (3) separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction-in-force; (4) reduction-in-force action affecting a career appointee in the Senior Executive Service; (5) reconsideration decision sustaining a negative determination of competence for a general schedule employee; and (6) disqualification of an employee or applicant because of a suitability determination. See Appendix I for a more complete listing of appealable actions. See Chapter 4, Section II of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter4.html) <http://www.eeoc.gov/federal/md110/chapter4.html> for a complete reference.

Right to File a Complaint of Discrimination

- ❑ Where counseling is selected, the right to receive in writing within 30 calendar days of the first counseling contact (unless the aggrieved person agrees in writing to an extension) a notice terminating counseling and informing the aggrieved of:
 - (1) the right to file a formal individual or class complaint within 15 calendar days of receipt of the notice,
 - (2) the appropriate official with whom to file a formal complaint (EEO/Diversity Program Manager), and

- (3) the complainant's duty to immediately inform the agency if the complainant retains counsel or a representative. Any extension of the counseling period may not exceed an additional sixty (60) calendar days.
- ❑ The requirement that the aggrieved person file a complaint within 15 calendar days of receipt of the Counselor's notice of right to file a formal complaint in the event s/he wishes to file a formal complaint at the conclusion of counseling or ADR.

Class Complaints

- ❑ The class complaint procedures and the responsibilities of a class agent, if the aggrieved person informs the EEO Counselor that s/he wishes to file a class complaint. See Chapter 8, Section II of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter8.html)
<http://www.eeoc.gov/federal/md110/chapter8.html>

Age Complaints

- ❑ For age complainants only. As an alternative to filing a complaint under 29 C.F.R. Part 1614, an aggrieved individual may file a civil action in a United States district court under the Age Discrimination in Employment Act of 1967, as amended, against the head of an alleged discriminating agency. You must give the EEOC not less than 30 days notice of the intent to file such an action. The head of the Department of Energy is the Secretary of Energy. Such notice must be filed in writing or by personal delivery or facsimile with the EEOC, P.O. Box 19848, Washington, DC 20036, within 180 days of the occurrence of the alleged unlawful practice.

Compensatory damages are not available under the Age Discrimination in Employment Act (ADEA), 29 USC §626(b). The 1991 Civil Rights Act amendments did not apply to the ADEA. The text of the ADEA explicitly provides for back pay, unpaid overtime compensation, and liquidated damages but not compensatory and punitive damages.

Complainants prevailing on claims under the Age Discrimination in Employment Act of 1967, as amended, and the Equal Pay Act of 1963, as amended, are not entitled to attorney's fees at the administrative level.

Reasonable Accommodation

- If complainant believes reasonable accommodation is the issue, a summary of complainants' rights and responsibilities may be viewed by accessing the DOE Human Resources web page at <http://worklifecenter.doe.gov/docs/DisabilityDocs/DOE%20Reasonable%20Accommodation%20Procedures.doc>. For employees located at the NNSA Service Center, procedures specific to the Service Center are located on the [EEO and Diversity web page](#) at www.doeal.gov/eeo/docs/requestreasonableaccom.pdf

Equal Pay Act of 1963

The right to go directly to a court of competent jurisdiction on claims of sex-based wage discrimination under the Equal Pay Act even though such claims are also cognizable under Title VII. A complainant may allege a violation of both Title VII and the Equal Pay Act and may have the complaint processed through the administrative process or alternatively file a suit in a United States district court. Complainants prevailing on claims under the Age Discrimination in Employment Act of 1967, as amended, and the Equal Pay Act of 1963, as amended, are not entitled to attorney's fees at the administrative level.¹

Like or Related Issues

- That only those claims raised at the counseling stage or claims that are like or related to those that were raised may be the subject of a formal complaint, and how to amend a complaint after it has been filed: Send written notice to the EEO/Diversity Program Manager, EEO and Diversity Office, P.O. Box 5400, Albuquerque, NM 87185.

Consolidation of Complaints

- That the agency must consolidate two or more complaints filed by the same complainant after appropriate notice to the complainant. The EEO Counselor should advise the complainant that when a complaint has been consolidated with one or more earlier complaints, the agency

¹ Sex-based claims of wage discrimination may also be raised under Title VII; individuals so aggrieved may thus claim violations of both statutes simultaneously. Equal Pay Act complaints may be processed administratively under Part 1614. In the alternative, a complainant in the EPA claim may go directly to a court of competent jurisdiction.

shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days of the filing of the first complaint and that the complainant may request a hearing before an EEOC Administrative Judge at any time after 180 days of the filing of the first complaint.

Right to Request a Hearing or Final Agency Decision

- ❑ The right to request a hearing before an EEOC Administrative Judge, except in a mixed case, after 180 calendar days from the filing of a formal complaint or after completion of the investigation, whichever comes first.
- ❑ The NNSA Service Center EEO/Diversity Office will provide, in writing, the identity and address of the EEOC field office to which the complainant must request a hearing. Send a copy of the request for a hearing to the EEO/Diversity Program Manager, EEO and Diversity Office, P.O. Box 5400, Albuquerque, NM 87185.
- ❑ The EEO Counselor should advise the aggrieved person of his/her duty to certify to the Administrative Judge that s/he provided the agency with a copy of a request for a hearing. See also Chapter 7, Section I, of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter7.html)
<http://www.eeoc.gov/federal/md110/chapter7.html>
- ❑ The right to an immediate final decision after an investigation by the agency.
- ❑ The right to go to U.S. District Court 180 calendar days after filing a formal complaint or 180 days after filing an appeal.
- ❑ The duty to mitigate damages, e.g., that interim earnings or amounts that could be earned by the individual with reasonable diligence generally must be deducted from an award of back pay.

Agency Offer of Final Resolution

- ❑ That rejection of an agency's offer of resolution made may result in the limitation of the agency's payment of attorney's fees or costs. See Chapter 6, Section XIII, of [EEOC Management Directive 110](http://www.eeoc.gov/federal/md110/chapter6.html)
<http://www.eeoc.gov/federal/md110/chapter6.html>

Current Address

- ❑ The duty to keep the agency and EEOC informed of his/her current mailing address and to serve copies of appeal papers on the agency.

Time Frames

- ❑ The time frames in the complaint process: Complainant has been provided with a copy of the EEO/Diversity Brochure. Additional copies are available on the [EEO/Diversity web page](http://www.doeal.gov/eo/docs/ComplaintProcess.pdf) (<http://www.doeal.gov/eo/docs/ComplaintProcess.pdf>)

Limited Use of Government Property

- ❑ Complainant is advised about the limited use of government property in the processing of their complaint. Detailed information regarding the use of government equipment may be found by accessing the [DOE Directive web site](http://www.directives.doe.gov/pdfs/doe/doetext/neword/203/o2031.pdf) at <http://www.directives.doe.gov/pdfs/doe/doetext/neword/203/o2031.pdf> and also at the Equal Employment Opportunity Commission [web site](http://www.eeoc.gov/federal/md110/chapter6.html) on MD-110, Chapter 6 (see Official Time) <http://www.eeoc.gov/federal/md110/chapter6.html>
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- ❑ Complainant has been provided a copy of this checklist.

EEO Counselor's Printed Name, Signature, and Date

Complainant's Printed Name, Signature, and Date